

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of:

On the Commissioner's Own Motion to Consider the Closure of the Public Crossings of Swiss Road and Country Club Road of the Wisconsin Central Ltd. (WCL) tracks and the Fox Valley and Western Ltd. (FVW) tracks in the Town of Black Wolf, Winnebago County, Wisconsin.

9164-RX-496

**FINAL DECISION AS TO COUNTRY CLUB ROAD
AND
SECOND SUPPLEMENTAL ORDER AS TO NEKIMI ROAD**

The Commissioner of Railroads, Rodney Kreunen, in response to a petition by the Town of Black Wolf, directed an investigation of eight crossings of the WCL and the FVW tracks by public highways in that Township. As a result thereof, on February 5, 2001, the Commissioner ordered significant signaling upgrades at most of such crossings, including Nekimi Road (690-136P and 179-527E). However, that order noted the potential closure of the crossing of WCL and FVW by Country Club Road (crossing numbers 690 137W and 179 528L). On April 18, 2002, the Commissioner rescinded the order of February 5, 2001 in so far as it pertained to the signaling of the Nekimi Road crossing, as that crossing was proximally related to the Country Club Road crossing and, therefore, deemed necessary to be simultaneously addressed. That matter was not part of the noticed hearing, but will be considered here, as this order is intended to resolve issues at both crossings.

Closing a crossing means that the roadway would be terminated at the tracks and would be permanently closed to public travel. Jurisdiction to examine the issues and to order such closure is conferred upon this Office by Sec. 195.29 of Wisconsin Statutes. Pursuant to due notice, a public hearing was held in this matter on November 14, 2002 at the Black Wolf Town Hall. Hearing Examiner David J. Meier presided.

Appearances:

Parties

In Support:

Wisconsin Central Ltd.
By
Mr. Terry Lee, PE
Engineer Planning
1625 Depot Street
Stevens Point, Wisconsin 54481

Town of Black Wolf
By
Mr. Frank Frassetto
Town Board Chairman

Wisconsin Department of Transportation
By
Mr. Jared Kinziger, Rail Coordinator

Of the Office Staff: Mr. David Schwengel, Safety Analyst

In addition to the parties, 29 persons registered their attendance at the hearing and, of that number, 11 testified. One of those testifying was Mr. Frassetto, Black Wolf Town Chairman, whose leadership first precipitated the study of this corridor and whose opinions are given great consideration in this decision.

PROPOSED FINDINGS OF FACT

Country Club Road is a two-lane road, 20 feet in width at the crossing. It lies on a North-South alignment. Nekimi Road is also a two-lane road, 20 feet wide, running East and West and crossing Country Club Road at a 90-degree angle. According to records of the Wisconsin Department of Transportation available at the time of hearing, both of these roads had average daily traffic volumes of about 155 vehicles per day at legal speed limits of 55 miles per hour. The Wisconsin Central Railroad and the Fox Valley and Western Lines are now both owned and operated by the Canadian National Railroad Company and are operated as two mainlines, one eastbound and the other westbound. They run parallel to and approximately 80 feet apart from each other. The Canadian National Railroad Company operates about 35 trains per day over each of these crossings at speeds of 50 mph westbound and 40 mph eastbound. The exposure factor, arrived at by simply multiplying average daily highway traffic volumes by rail traffic volumes, is 5425 at each of these crossings. These exposure factors, absent other considerations, would but marginally justify the required expenditure of about \$120,000.00 at each crossing to provide the minimum warning devices required to meet proposed Federal standards for "Quiet Zone" purposes. But, the combined total of these exposures, if consolidated at a single crossing, more than justify such expenditure.

The crossings by Country Club Road and Nekimi Road will each be treated as single crossings of these multiple rail lines. And, in this proposed findings, the combined multiple lines of the Canadian National Railroad Company will be referred to and treated as a single railroad.

The physical relationship of Country Club Road, Nekimi Road and the Canadian National Railroad is best thought of as a right triangle, with the two Roads making the 90-degree angle and the railroad forming the hypotenuse. The angle of intersection at the crossings is about 16 degrees with regard to Country Club Road and about 74 degrees at Nekimi Road. A necessary corollary to these angles is that motor vehicle drivers on Country Club Road, both northbound and southbound, must turn about 164 degrees to observe for approaching trains. The much reduced angle at the Nekimi Road crossing renders that a much safer crossing and a much more appropriate place to channel

the Country Club traffic across the tracks. And this will be so regardless of the status of crossing protection at these crossings.

The sight distances at the Country Club Road crossing are also deficient in all quadrants, except the Southeast. The Southeast quadrant is the most difficult to view for northbound travelers. These visual restrictions form additional reason to move this traffic to the Nekimi Road crossing.

The distance from the Country Club Road crossing to the Nekimi Road crossing is about 880 feet, measured along the tracks. The Town of Black Wolf has indicated its intention to build a road spanning this distance and intersecting Country Club Road north of the tracks and Nekimi Road east of the tracks. The building of that connector will render the crossing of the tracks by Country Club Road unnecessary and redundant. Public safety will be better served by the modified traffic pattern, without undue impact on public convenience. It is reasonable, therefore, to close the crossing by Country Club Road. Such closing will divert a substantial amount of vehicular traffic over the Nekimi Road crossing. As a result, the safety of the traveling public at the Nekimi Road crossing will require the installation of automatic flashing light signals, gates and constant warning time circuitry.

Consistent with prior OCR practice, the order requires the Wisconsin Central Railroad to pay the entire costs of closing the crossing except that the Town of Black Wolf shall furnish, install and maintain the roadway barricades. Apportioning the majority of the closing cost to the railroad is consistent with the past practice of the OCR. (See, e.g., 9164-RX-332, Wisconsin Central Ltd., Plank Road, Mukwonago; 9020-RX-109/112, Burlington Northern Railroad Co., 13th Place, La Crosse; 9164-RX-196, Wisconsin Central Ltd., 271st Avenue, Town of Salem, Kenosha County; 9068-RX-35, Fox Valley Western Ltd., Depot Street, Kaukauna; 9164-RX-227, Wisconsin Central Ltd., Evergreen Avenue, Solon Springs; 9164-RX-306, Holmes Road, Town of Brillion, Calumet County; and 9163-RX-111, Wisconsin & Southern Railroad Co., Old CTH DT, Town of Genesee, Waukesha County.)

While public safety will benefit from the closing, the railroad will obtain substantial and permanent financial gains from the closing. First, railroads bear a statutory duty to maintain all at-grade crossings. A full rehabilitation of a crossing like could easily cost \$10,000 to \$20,000. Second, the inconvenience occasioned by the closing of the crossing all falls on the public, not the railroad.

The order requires the Railroad to remove the crossing surfaces and the roadway surface from within its right-of-way at Country Club Road between November 1 and November 31, 2004. The order also requires the Town of Black Wolf to install Type III barricades with red and white reflective material on each approach to that crossing by November 1, 2004. These are temporary barricades that the Town is required to replace with permanent steel guardrail barricades when it constructs the vehicle turnarounds.

The order requires the Town of Black Wolf to install a vehicle turnaround area on both approaches to the existing Country Club Road crossing. It may construct any non-cul de sac turnaround design consistent with the AASHTO's, "A Policy on Geometric Design of Highways and Streets", 1994. Specifically, the Commissioner approves L-type, T-type, Y-type or I Branch turnarounds as shown in Figure V-1. These turnaround designs are adequate for the low volume of traffic that would be on

Country Club Road after the crossing is closed.

In summary, the closure of the crossing at-grade of the WCL and FVW tracks with Country Club Road will promote public safety by eliminating a point of potential conflict between trains and vehicles.

FINDINGS OF ULTIMATE FACT

1. That the closure of the crossing at-grade of the WCL and FVW tracks with Country Club Road in the Town of Black Wolf, Winnebago County will promote public safety.

2. That it is reasonable that Wisconsin Central Limited bear the cost to close the Country Club Road crossing, including the construction of vehicle turnarounds, removal of the crossing and the roadway approaches within its right-of-way.

3. That it is reasonable that the Town of Black Wolf shall bear the costs to install and maintain barricades on Country Club Road.

CONCLUSION OF LAW

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats, extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

ORDER

1. That the **Wisconsin Central Limited** shall remove the crossing surface and the roadway approaches within their right-of-way for the crossing at-grade of Country Club Road with their tracks in the Town of Black Wolf, Winnebago County, between **November 1, 2004 and November 31, 2004**.

2. That the **Town of Black Wolf** shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossing at-grade of Country Club Road with the WCL and FVW tracks in the Town of Black Wolf, Winnebago County by **November 1, 2004**. [see Sections 3F-1, 6C-8 and Figure 6-14 in the Manual on Uniform Traffic Control Devices (MUTCD)].

3. That the **Town of Black Wolf** shall install and maintain L-type, T-type, Y-type or I Branch turnarounds at or near the termini of Country Club Road consistent with American Association of State Highway and Transportation Officials (AASHTO) guidelines (1994 edition, pages 433-435 and Figure V-1) in the Town of Black Wolf, Winnebago County by **November 1, 2004**.

4. That the **Town of Black Wolf** shall install and maintain a steel guard rail barricade with reflective red and white stripes at or near the terminus of the approaches on each side of the crossing at-grade of Country Club Road with the WCL and FVW tracks in the Town of Black Wolf, Winnebago County by **November 1, 2004**.

5. That **Wisconsin Central Limited** shall give notice in writing to the Town of Black Wolf at least 10 days prior to commencing work to close the crossings.

7. That the **Wisconsin Central Limited** shall bear the cost to close the Country Club Road crossing, including the construction of vehicle turnarounds, removal of the crossing and the roadway approaches within its right-of-way. The **Wisconsin Central Limited** shall also bear any cost assessed to the railroad pursuant to §195.60, Stats, for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

8. That the **Town of Black Wolf** shall bear the costs to install and maintain the barricades on Country Club Road.

9. That jurisdiction is retained.

SECOND SUPPLEMENTAL ORDER AS TO NEKIMI ROAD

1. That the order of the Commissioner dated May 21, 2001 and providing for the installation of automatic 12 inch flashing light signals, gates and constant warning time circuitry at the Nekimi Road crossing, be and hereby is reinstated in full. Except that the date of completion of such installation shall be November 1, 2004.

Dated at Madison, Wisconsin, this 2nd day of June, 2004.

By the Office of the Commissioner of Railroads:

Rodney W. Kreunen, Commissioner of Railroads

9164-F2-496